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Maritime Security

*Fighting Piracy in the
Gulf of Aden and Beyond*

*By James Jay Carafano, Ph.D.,
Richard Weitz, Ph.D.,
and Martin Edwin Andersen*



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About the Authors

James Jay Carafano, Ph.D., is Assistant Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and Senior Research Fellow for National Security and Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation.

Richard Weitz, Ph.D., is Senior Fellow and Director of the Center for Political–Military Affairs at the Hudson Institute.

Martin Edwin Andersen served as Senior Defense and Foreign Policy Adviser to the late U.S. Senate Majority Whip Alan Cranston and is former editor of *Port Security News*.

Members of The Heritage Foundation's Maritime Security Working Group

James Jay Carafano, Ph.D., The Heritage Foundation

Jim Dolbow, Contributor, An Unofficial Coast Guard Blog

Mackenzie M. Eaglen, The Heritage Foundation

Shelly Gardiner, U.S. Coast Guard (Consultant)

Mark Gaspar, Director, Maritime Systems, Lockheed Martin Corporation

Daniel Gouré, Vice President, The Lexington Institute

James D. Hull, Independent Consultant

Michael W. Kichman, U.S. Coast Guard (Consultant)

Robbin F. Laird, Ph.D., Gryphon Technologies

Kevin R. McCarthy, Catalyst Partners

Jena Baker McNeill, The Heritage Foundation

David Olive, Olive, Edwards, & Cooper LLC

James Phillips, The Heritage Foundation

Rob Quartel, FreightDesk Technologies

Corey D. Ranslem, Secure Waters LLC

Luke Ritter, Ridge Global LLC

Jeffrey C. Robertson, U.S. Department of Homeland Security

Brett D. Schaefer, The Heritage Foundation

Irvin Varkonyi, George Mason University

Richard Weitz, Ph.D., Hudson Institute

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214 Massachusetts Avenue, NE
Washington, DC 20002–4999
(202) 546-4400 • heritage.org

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EXECUTIVE SUMMARY

The Heritage Foundation's Maritime Security Working Group—composed of representatives from academia, the private sector, research institutions, and government—produces cutting-edge policy recommendations for making the seas safer for the United States, its friends and allies, and global commerce. The fourth occasional report by the group addressing the most pressing issues confronting maritime security examines the issue of piracy in the Gulf of Aden and the appropriate U.S. response.

This report:

- **Describes** the threat of piracy to global commerce and the safety and security of ships transiting the Gulf of Aden;
- **Addresses** domestic and international legal aspects of responding to piracy and other criminal acts at sea;
- **Proposes** the appropriate mix of private-sector and U.S. military responses to piracy, including long-term investments in constabulary maritime assets;
- **Recommends** solutions for improving the capacity of regional powers to protect freedom of the seas; and
- **Outlines** a strategy for dealing with the “root” of the problem: lack of governance in Somalia.

Though the report's proposals are focused on the Gulf of Aden, they have implications for combating piracy worldwide. Since 2003, piracy has been reported off the coasts of Bangladesh, Nigeria, Brazil, and Peru. Raising levels of piracy off the coast of East Africa, however, could be a precursor to a new global trend. The recent successes of the Somali pirates may empower and inspire other groups. The frequency and level of violence from piracy acts could increase. Within the last month, there were two attacks in Port-au-Prince, Haiti, and a coastal tanker was hijacked off the coast of Colombia. While the appropriate response for each threat must be tempered by local conditions, the solutions and instruments for responsible action in the Gulf of Aden will hold lessons for meeting the challenge of piracy in other parts of the world.

The key findings and recommendations of this report include:

- Although piracy does not currently directly threaten U.S. vital national interests, transnational criminal activities at sea adversely affect American interests in the region and are detrimental to freedom of the seas and the exercise of global commerce (80 percent of which takes place by sea) upon which U.S. security and prosperity depends.
- Responding to the recent surge of piracy in the Gulf of Aden does not require new laws. The international community, however, needs to refine common understandings of legal issues surrounding high-seas piracy and the use of naval patrols and related military activities. Legal agreements, including the January 2009 U.S.–Kenyan Memorandum of Understanding, offer the international community a viable method to deter and punish acts of piracy.
- Flag-carrier nations working with the International Maritime Organization should ensure fuller compliance with International Shipping and Port Security codes and ensure that commercial carriers adopt best practices for operating in waters that are at high risk of piracy.
- The U.S. should employ Africa Command (AFRICOM) as a principal agent for building regional capacity and cooperation in combating piracy.
- The United States should expand its assistance to the Saudi navy, which has initiated a major modernization program. The sale to Saudi Arabia of some number of Littoral Combat Ships, advanced unmanned aerial vehicles, and intelligence fusion systems should be considered.

- Ultimately, defeating piracy requires rebuilding governance in Somalia. The U.S. government should recognize and bolster points of stability in the country, working with local authorities toward the long-term goal of expanding capable governance in Somalia.
- Over the long term, to combat piracy and other maritime threats, the U.S. requires a more integrated and robust ship-building program for both Navy and Coast Guard surface and aviation assets. The U.S. military contribution should shift from the Navy to the Coast Guard, and the capacity of the Coast Guard to conduct global constabulary maritime operations must be expanded.

INTRODUCTION

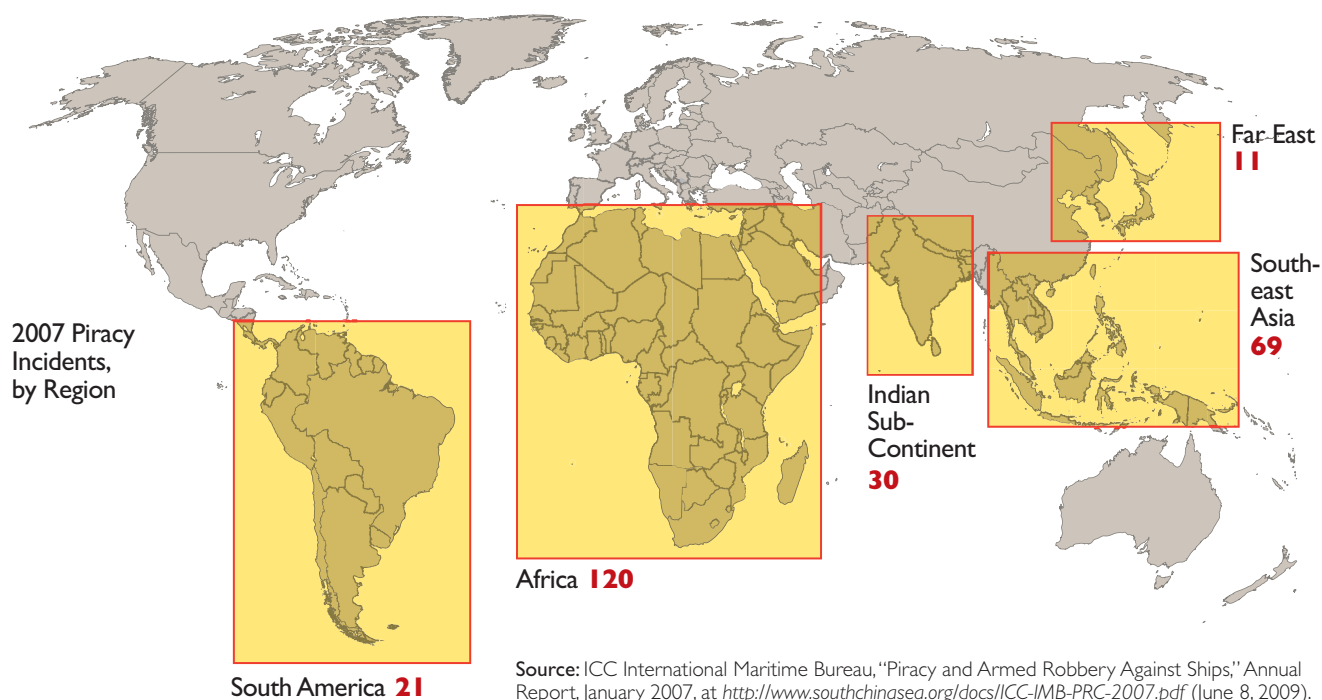
Protecting the Seas

In 2005, in its first report, “Making the Sea Safer: A National Agenda for Maritime Security and Counterterrorism,”¹ The Heritage Foundation’s Maritime Security Working Group outlined the future threats to and gaps in U.S. maritime security. Rather than focus on episodic, short-term issues, such as container inspection, the group offered a broader and more thoughtful assessment of the maritime challenges facing the United States, including:

- **Dependence on maritime trade.** Maritime commerce will be an increasingly important component of the global economy. Modern maritime commerce is generally defined by large, containerized shipping moving through megaports, which form the backbone of just-in-time international trade.
- **Maritime criminal activity.** Piracy, human trafficking, and drug and arms smuggling will continue. Terrorists could mimic or collaborate with criminal enterprises.
- **The economic impact of security in the developing world.** Developing countries may find it increasingly difficult to meet the demands of international security regimes for trade and travel. If this occurs, these relatively weaker economies may become less competitive in global markets.
- **Undersea infrastructure.** Undersea critical infrastructure, such as oil and gas pumping stations and telecommunications cables, are fast becoming an increasingly important part of the global economy.
- **The potential for standoff attacks from the sea.** State and non-state actors will be capable of attacking the U.S. from its own territorial waters using unmanned aerial vehicles, short-range ballistic missiles, and cruise missiles, possibly armed with weapons of mass destruction. The group also recognized that terrorists could use small boats packed with explosives, as were used in the attack on the USS *Cole*, and employ floating improvised explosive devices or naval mines against commercial shipping in U.S. waters and overseas ports.
- **The lack of visibility in noncommercial maritime activity.** Currently, the United States lacks sufficient means to monitor maritime activity.
- **Internal threats from rogue actors and landside attacks.** The greatest vulnerability to maritime infrastructure may be internal threats. These include disgruntled employees who have an intimate knowledge of operations and facilities with access to transportation and port assets.
- **The maritime domain as a target and facilitator of threats against the environment.** Opportunities for the spread of infectious disease and other environmental threats carried by seaborne traffic will increase as maritime commerce increases.
- **Anti-access strategies.** An enemy might attack vulnerable targets on U.S. territory as a means to coerce, deter, or defeat the United States.

1. James Jay Carafano and Alane Kochems, “Making the Sea Safer: A National Agenda for Maritime Security and Counterterrorism,” Heritage Foundation *Special Report* No. 3, February 17, 2005, at www.heritage.org/Research/HomelandDefense/upload/74871_4.pdf.

Piracy Most Prevalent Around Africa



Map I • SR 59 heritage.org

Overall, the report argued for a comprehensive, strategic approach to making the seas safer, rejecting simplistic security proposals that focus on inspecting containers and handing out federal port security grants.

In 2006, the working group's second report, "Trade Security at Sea: Setting National Priorities for Safeguarding America's Economic Lifeline,"² made the case that, based on the nature of existing and emerging threats, the United States' highest priority in maritime security should be ensuring the resiliency of global maritime commerce, thereby ensuring unimpeded trade and travel, regardless of what terrorists might attempt in the maritime environment. In order to protect maritime trade, the working group focused on three essential enablers:

- **Expanding** the capabilities of the U.S. Coast Guard by fully funding Coast Guard modernization and ensuring that the service has the resources to perform all of its missions;
- **Improving** the sharing and use of commercial information; and
- **Enhancing** international cooperation.

The working group's third report in 2008, "Securing the High Seas: America's Global Maritime Constabulary Power,"³ examined in greater detail how to provide the enforcement tools for making the seas safer. The principal recommendations included:

- **Doubling** the U.S. Coast Guard's active and reserve end strength over the next decade and accelerating Coast Guard modernization;
- **Expanding** the Navy's stated goal of raising its number of ships from 277 to 313 (the majority of the additional 36 should be nuclear powered, including additional nuclear-powered submarines) and

2. James Jay Carafano and Martin Edwin Andersen, "Trade Security at Sea: Setting National Priorities for Safeguarding America's Economic Lifeline," Heritage Foundation *Backgrounder* No. 1930, April 27, 2006, at <http://www.heritage.org/Research/HomelandSecurity/bg1930.cfm>.

3. Mackenzie M. Eaglen, James Dolbow, Martin Edwin Andersen, and James Jay Carafano, "Securing the High Seas: America's Global Maritime Constabulary Power," Heritage Foundation *Special Report* No. 20, March 12, 2008, at http://www.heritage.org/Research/nationalsecurity/upload/SR_20.pdf.

focusing Navy operations more on sea control and assured access, less on maritime engagement and security missions; and

- **Establishing** a Common Maritime Security Fleet Fund to bolster modernization.

This newest report, “Maritime Security: Fighting Piracy in the Gulf of Aden and Beyond,” provides specific short-, near-, and long-term recommendations for addressing piracy and other armed criminal acts at sea. It assesses the current threat in the Gulf of Aden and proposes the appropriate role for American power to protect U.S. interests and meet U.S. responsibilities to facilitate global commerce and maintain freedom of the seas. This year’s report includes more than 20 key findings and recommendations for responding to piracy in the Gulf of Aden. The most crucial recommendations are that the U.S. government should:

- **Collaborate** with other flag-carrying nations to ensure that private carriers comply with the International Ship and Port Facility Security (ISPS) code and adopt best practices, including the appropriate use of private maritime security and consulting companies.

Locations of Pirate Attacks Since 2003

	2003	2004	2005	2006	2007
Southeast Asia					
Burma	0	1	0	0	0
Indonesia	121	94	79	50	43
Malacca Strait	28	38	12	11	7
Malaysia	5	9	3	10	9
Philippines	12	4	0	6	6
Singapore Strait	2	8	7	5	3
Thailand/Gulf of Thailand	2	4	1	1	2
Far East					
China/Hong Kong/Macau	1	3	4	1	0
East Papua New Guinea	0	0	0	0	1
Solomon Islands	0	0	0	0	1
South China Sea	2	8	6	1	3
Taiwan	1	0	0	0	0
Vietnam	15	4	10	3	5
Indian Sub-Continent					
Bangladesh	58	17	21	47	15
India	27	15	15	5	11
Sri Lanka	2	0	0	1	4
Americas					
Argentina	0	0	0	1	0
Brazil	7	7	2	7	4
Caribbean	4	0	0	0	0
Colombia	10	5	2	2	0
Cuba	4	0	0	0	0
Dominican Republic	6	2	1	0	0
Ecuador	2	1	0	1	0
Guyana	6	2	1	1	5
Haiti	1	6	2	0	2
Honduras	1	1	0	0	0
Jamaica	5	7	8	3	1
Martinique	1	0	0	0	0
Panama	2	0	0	0	0
Peru	7	5	6	9	6
El Salvador	0	0	1	0	0
Suriname	0	0	0	0	2
Trinidad & Tobago	2	1	0	1	0
United States	1	1	0	0	0
Venezuela	13	7	2	4	1
Africa					
Angola	3	0	0	4	1
Benin	1	0	0	0	0
Cameroon	2	4	2	1	0
Dem. Republic of Congo	0	0	0	3	4
Egypt	0	0	0	0	2
Eritrea	0	1	0	0	1
Ghana	3	5	3	3	1
Guinea	4	5	1	4	2
Ivory Coast	2	4	3	1	0
Kenya	1	1	0	0	4
Liberia	1	2	0	0	1
Madagascar	0	1	1	0	1
Mauritania	0	2	1	1	0
Morocco	0	0	1	0	1
Mozambique	1	0	0	0	3
Nigeria	39	28	16	12	42
Gulf of Aden/Red Sea	18	8	10	10	13
Senegal	8	5	0	0	0
Sierra Leone	0	3	0	2	2
Somalia	3	2	35	10	31
South Africa	1	0	0	0	0
Tanzania	5	2	7	9	11
Togo	1	0	0	1	0
Rest of World					
Arabian Sea	0	2	2	2	4
Arabian Gulf	1	0	0	0	0
Belgium	0	0	0	1	0
Bulgaria	1	0	0	0	0
Indian Ocean	0	0	1	0	0
Iran	2	0	0	2	2
Iraq	0	1	10	2	2
Oman	0	0	0	0	3
Pacific Ocean	0	1	0	0	0
Saudi Arabia	0	0	0	1	0
UAE	0	2	0	0	0
United Kingdom	0	0	0	0	1
Year Total	445	329	276	239	263

Source: ICC International Maritime Bureau, “Piracy and Armed Robbery Against Ships,” Annual Report, January 2007, at <http://www.southchinasea.org/docs/ICC-IMB-PRC-2007.pdf> (June 8, 2009).

- **Implement** a more robust and integrated Coast Guard and Navy shipbuilding program and expand the capacity of the U.S. Coast Guard for conducting global maritime constabulary operations, including combating piracy.
- **Use** AFRICOM to integrate and organize security-assistance efforts.
- **Encourage** nations in the region to establish a joint maritime patrol and the infrastructure for a regional network to combat piracy.
- **Consider** joint modernization programs with regional allies, including the sale of the Littoral Combat Ship (LCS), advanced unmanned aerial vehicles, and intelligence fusion systems.
- **Work** with the international community on a proactive strategy to re-establish governance in Somalia by bolstering points of stability in the country working with local authorities toward the long-term goal of expanding rule of law in the country.

Finally, the working group concluded that many of the recommendations in this report could serve as a model for responding to transnational crime and terrorist acts at sea in other regions of the world as well.

This report is divided into five sections. **Section 1** assesses the threat. **Section 2** describes legal authorities for addressing piracy. **Section 3** proposes the appropriate mix of public- and private-sector efforts. **Section 4** examines international cooperation among governments and building of regional counter-piracy capabilities. **Section 5** recommends a strategy for restoring governance in Somalia.

SECTION 1

The Threat

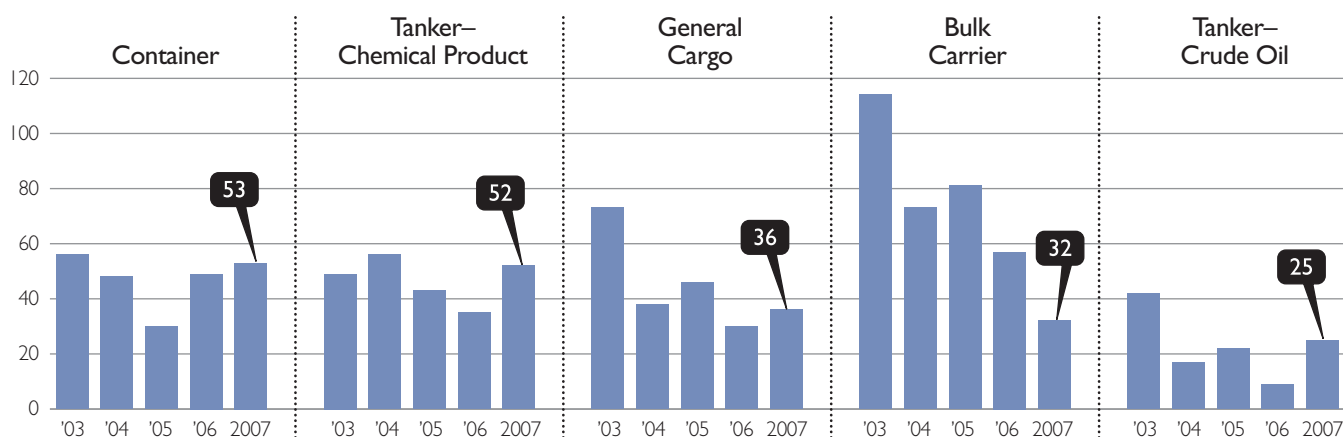
Piracy in the waters in and around the Gulf of Aden remains a global concern. Incidences of piracy on one of the world's busiest waterways continue to climb. In addition, these criminal enterprises contribute to lawlessness in the Horn of Africa, empowering extremist groups, some with links to transnational terrorist organizations. Although piracy does not directly threaten U.S. vital national interests at the moment, transnational criminal activities at sea adversely affect American interests in the region and are detrimental to freedom of the seas and the exercise of global commerce (80 percent of which takes place by sea) upon which U.S. security and prosperity depend.

Pirate Alley. Pirate activities in the region have focused on the Gulf of Aden, a key component of the Suez Canal shipping lane linking Asia and the West without circumnavigating the African continent. The gulf, with an average width of about 300 miles, flows about 920 miles between Yemen (on the south coast of the Arabian Peninsula), Somalia, and Djibouti, covering 205,000 square miles.

Approximately 21,000 commercial ships transit the Gulf of Aden each year. Over 10 percent of the global waterborne transportation of oil passes through the gulf. About 7 percent of the world's maritime commerce transits the Suez Canal. About 80 percent of the vessels transiting the Gulf of Aden carry cargo to and from Europe, East Africa,

The Five Vessel Types Most Often Attacked by Pirates

Pirates have been targeting container ships and tankers in recent years. The charts below show pirate attacks per year, and are ordered, highest to lowest, by the number of attacks in 2007.



Source: ICC International Maritime Bureau, "Piracy and Armed Robbery Against Ships," Annual Report, January 2007, at <http://www.southchinesea.org/docs/ICC-IMB-PRC-2007.pdf> (June 8, 2009).

South Asia, and the Far East, although a significant portion of the cargo carried is eventually bound for the United States. Much of this commerce also indirectly affects the United States through its impact on facilitating the global supply chain of moving goods and services.

The waterway’s importance to global commerce rests on the fact that the alternative shipping route requires ships to round the Cape of Good Hope at the tip of Africa. According to the U.S. Maritime Administration (MARAD), following the longer route adds 2,700 miles for tanker traffic from Saudi Arabia to the United States. A tanker transiting this route could see an increase in annual fuel costs of about \$3.5 million. Due to the longer route, a tanker would also have to reduce its round trips by one per year (reducing the tanker’s delivery capacity by 26 percent). The economic impact for “liner trades,” such as container ships, might be even more significant. Ships following the longer route from Tokyo to Rotterdam would have to follow a 23 percent longer route. Increased additional costs amount to \$74.4 million for fuel and \$14.6 million in charter expenses. The potential disruption to supply chains could also be great. While rerouting might not greatly impact lower-value cargoes (like bulk commodities not required for a manufacturing process), the cost of consumer goods or commodities and parts needed for just-in-time manufacturing might be significantly affected. The circumnavigation route is not only longer, and more costly, but winter storms around the cape can pose a grave danger to navigation.

In addition, for commercial transport, a number of ships must transit the waters off the southeast coast of Somalia. These ships carry goods and supplies, including humanitarian relief, to or from ports along the east coast of Africa. Finally, Somali waters are some of the most abundant fishing grounds in the world. This maritime activity as well as the economic resources and the environment of the gulf must be safeguarded as well.

Crimes at Sea. The goal of modern-day pirates operating in the Gulf of Aden is primarily to make money—taking over a ship, seizing hostages and cargo, and waiting for the shipping company to pay a ransom. This approach usually translates into \$1 million to \$2 million in ransom per ship. As a result, the security consulting firm BGN Risk estimated an increase in total insurance costs for ships transiting the area at about \$400 million due to the increase in piracy in the region since November 2008. This does not include coverage for injury, liability, and ransom that carriers may opt to buy. In addition to these increased costs, worldwide maritime freight rates have declined, putting additional financial pressure on carriers. Nevertheless, despite the higher costs and risks, substantial trade has not been diverted from the gulf since carriers still feel the economic benefits of the route outweigh the costs and risks.

The major pirate bases are in Somalia, principally in Eyl in the northeastern Puntland region, and in Xarardheere, in the central part of the country. An official of the East African Seafarers’ Assistance Programme estimated that Somali pirates total about 1,000 armed men. Many are former fisherman or militia fighters.

Typically, pirates deploy in a “mother ship,” often a stolen fishing vessel. Depots are established along the coast to rearm and resupply the ships so they can operate at sea for extended periods. The mother ship will observe shipping in a 40 to 50 nautical mile area. After identifying ships for seizure, the mother ship will send two to four small high-speed (up to 25 knots) boats. The boats will flank the target, sometimes firing automatic weapons and rocket-propelled grenades to intimidate the crew and force the ship to slow down. Using grappling hooks or ladders, the pirates climb on board and sequester the crew. The boarding pirate team often consists of seven to 10 pirates armed with assault rifles and rocket-propelled grenades. Contributing to the ease

Pirates’ Choice of Weapons

	2003	2004	2005	2006	2007
Guns	100	89	80	53	72
Knives	143	95	80	76	67
Not stated	168	130	103	100	110
Other	34	15	13	10	14
Year Total	445	329	276	239	263

Pirates’ Acts of Violence

	2003	2004	2005	2006	2007
Hostages taken	359	148	440	188	292
Kidnap/ransom	0	86	13	77	63
Crew threatened	65	34	14	17	6
Crew assaulted	40	12	6	2	29
Crew injured	88	59	24	15	35
Crew killed	21	32	0	15	5
Missing	71	30	12	3	3
Year Total	644	401	509	317	433

Source: ICC International Maritime Bureau, “Piracy and Armed Robbery Against Ships,” Annual Report, January 2007, at <http://www.southchinasea.org/docs/ICC-IMB-PRC-2007.pdf> (June 8, 2009).

Table 2 • SR 59  heritage.org

of taking over a ship is the low number of crew members (often no more than a dozen or so) that staff most modern merchant ships. Most are unarmed.

The attack skiffs used in the seizure are taken under tow by the hijacked ship, which is directed to an anchorage off the Somali coast. The pirates then employ intermediaries to negotiate the release of the crew and ship. In 2008, only four mariners were reported killed. Fourteen more are missing and presumed dead. Although crewmembers are rarely harmed, they are often robbed and the ships pilfered.

Piracy in the Gulf of Aden directly affects only a small number of ships, but the frequency of attacks has been increasing. In 2006, the Somali pirates began to significantly shift operations from Somali waters to the gulf and further down the African coast as far as the Seychelles. The International Chamber of Commerce's International Maritime Bureau reported 111 incidents off the coast of Somalia 2008, twice the number from the year before. Thirty-two were hijacked.

The Pirate Universe. The pirates live in Somalia. They sell the fruits of their piracy. They obtain resources for more missions, and collect intelligence needed to target ships from on-shore spies that are believed to be deployed in ports throughout the region. Cutting pirates off from these benefits is central to minimizing Somali piracy over the long term.

Somalia has a well-earned reputation as a failed state. Since the U.N. withdrew in March 1995 without restoring an effective central government, little progress has been made. Aside from the autonomous, broadly self-governed enclaves of Somaliland and Puntland in the northern parts of the country, Somalia has suffered from anarchic conditions and the dysfunctional rule of a succession of tribal factions, warlords, Islamist groups, and foreign interventions for the past 18 years. Today there is no effective central government.

Somalia's condition as a "failed state" reflects local rage and impotence created by a national inability to defend its fishing grounds from the predations of illegal fishing and the dumping of toxic wastes—including nuclear waste—by non-Somalis, sometimes backed up by their countries' warships. U.N. Environmental Program spokesman Nick Nuttall graphically described the lawlessness imposed by the outside world on Somalia when he forecast that "European countries and others" would continue to use Somali waters "as a dumping ground for a wide array of nuclear and hazardous wastes.... There's uranium radioactive waste, there's lead, there's heavy metals like cadmium and mercury, there's industrial wastes, and there's hospital wastes, chemical wastes—you name it." The U.N. Special Envoy for Somalia last year scored "a disaster off the Somali coast, a disaster [for] the Somali environment, [and] the Somali population." Scottish academic Peter Lehr referred to the pirates' booty of \$100 million in ransoms, and the Euro-Asian pilfering of \$300 million in fish as a "resource swap." In turn, pirates often portray themselves to an angry populace as modern day Robin Hoods or—failing the test of redistribution—at least a successful embodiment of local grievance. Posing as defenders of Somali fishermen, some pirate groups have taken to calling themselves the "National Volunteer Coast Guard of Somalia," or "Somali Marines."

Within this ungoverned space, pirate groups have carved an effective operational support network. According to J. Peter Pham, director of the Nelson Institute for International and Public Affairs at James Madison University, "many people are involved in the process—from the dealers who supply the pirates with the fuel to sail out, to the prostitutes who entertain them on their return." The network in which pirates operate is transnational, including "pirate financiers in the Somali diaspora." The logistical and support network for the pirates extends to Yemen and beyond.

The pirate network also includes, according to Pham, "the regional Puntland government and al-Shabab, the al Qaeda-linked Islamist militant group that was formally designated a 'foreign terrorist organization' last year by the U.S. State Department." Al-Shabab benefits from the pirate activities in several ways. Pirates are used to smuggle goods and weapons from Yemen to Somalia. There are also documented cases where pirates have transported foreign fighters into the country, and terrorists out, including one of the perpetrators on a bombing in Yemen in March 2009 that killed four South Korean tourists. Additionally, the pirates share the proceeds with al-Shabab for being allowed to operate in the areas controlled by the Islamist group. Finally, some reports suggest that pirates have been helping train and equip the militias so that they can expand Islamist control over the Somali coastal waters.

Perhaps the most negative consequences of the success of the pirate activity are its contributions to making lawlessness endemic in the Horn of Africa, expanding the network of transnational criminal activity, and facilitating the

expansion of Islamist influence. Pirates obtained about \$30 million in ransom in 2008, in addition to making money through other criminal activities, such as smuggling. Profits are distributed to members of the pirate groups and their supporters and suppliers, as well within the clan, which includes both families and friends. In addition, pirates use their profits to expand their capabilities and scope of their criminal activities. “Flush with cash, pirates may upgrade their equipment (boats, weapons, boarding equipment),” Rear Admiral Ted Branch stated in congressional testimony, and “improve their tactics and procedures, and continue to adapt to coalition naval presence over time.”⁴ Thus, even as security at sea is enhanced, pirates may well adopt more lethal and violent tactics as well as new weapons and capabilities to capture ships. A pirate skiff recently lobbed explosives at a commercial ship, the first time that tactic had been reported.

There is also the potential that successful piracy tactics could be “exported” to other regions. While piracy in the Strait of Malacca has declined in recent years, other areas of the world have seen an increase. Since 2003, notable pirate activity has also been reported off Bangladesh, Brazil, Colombia, the Dominican Republic, Ecuador, and Guyana. Recently there were two attacks in Port-au-Prince, Haiti, and a coastal tanker was hijacked off the coast of Colombia. Rising levels of piracy off the coast of Africa could be a precursor to a new global trend. The success of the Somali pirates may empower and inspire other groups. The number, frequency, and level of violence from piracy acts could increase.

On the other hand, the threat of transnational criminal enterprises must be put in perspective. For instance, ransom and increased security costs in the Gulf of Aden total less than a billion dollars a year. Pirate attacks affect a small fraction of the ships transiting the gulf. In contrast, in the Western Hemisphere, the U.S. confronts transnational criminal cartels that smuggle guns, drugs, people, and money as part of a \$25-billion-a-year enterprise that threatens U.S. sovereignty and directly affects many citizens in the U.S. and Mexico. Thus, while the U.S. has a significant interest in combating piracy at sea, it is only one of many U.S. obligations to protect its national security. The resources dedicated to addressing the problem should be commensurate with U.S. interests and priorities.

Summary of Key Points.

- The waters of the Gulf of Aden are a part of a critical shipping lane, vital to global commerce.
- Criminal activity is increasing, though not sufficient to significantly disrupt global shipping patterns.
- Pirate operations are a threat to regional stability and facilitate Islamist activity and transnational criminal enterprises.

4. Statement of Rear Admiral Ted N. Branch on International Piracy on the High Seas Before the Subcommittee on Coast Guard and Maritime Transportation, Committee on Transportation and Infrastructure, U. S. House Of Representatives, February 4, 2009, at <http://transportation.house.gov/Media/File/Coast%20Guard/20090204/Branch%20testimony.pdf> (June 4, 2009).

SECTION 2

Legal Authorities

Jurisdiction in the fight against piracy is universal. Both the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea hold that all states must cooperate to the fullest measure in suppressing piracy. The surge of piracy in the Gulf of Aden does not require new law, but it does demonstrate that the international community needs to further refine common understanding over legal issues surrounding high-seas piracy and the use of naval patrols and related military activities.

The United States has laws against piracy of long standing, including Title 18 of the U.S. Code, section 1651, which provides that “Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.” In cooperating with other nations, the United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) provides a framework for delivery of suspected pirates to coastal nations for subsequent prosecution or extradition. The SUA Convention was drafted in the aftermath of the hijacking and murder of defenseless passengers aboard the Italian cruise ship *Achille Lauro* in 1985. Adopted by the International Maritime Organization in 1988, the SUA Convention entered into force in 1992 and addresses crimes against ships, crew, and passengers.

The United States has implemented the SUA Convention in Title 18 of the U.S. Code, section 2280, which prohibits seizing a ship by force, threat, or intimidation, and performing acts that could endanger the safe navigation of the ship, such as acts of violence against persons on board, destroying or damaging a ship or cargo, placing a device or substance on the ship that is likely to destroy it, destroying maritime navigation facilities, or communicating false information. The SUA Convention obligates state parties to criminalize such acts and establish jurisdiction when the offense is committed against their vessels or nationals. A master of a state party vessel may deliver suspects to another state party and the receiving state is obligated to accept delivery of suspects. The state party can then either prosecute or extradite the suspects to another SUA party, unless it determines SUA is not applicable.

For the 78 percent of the world states—those who have signed the convention—SUA today offers an immediately available instrument for logistically effective delivery of apprehended parties or “persons under control” (PUC). The 150 state parties to the SUA Convention include Bahrain, Djibouti, Kenya, Oman, Qatar, Saudi Arabia, Sudan, the United Arab Emirates, and Yemen.

On December 2, 2008, the United Nations Security Council unanimously passed UNSCR 1846. Valid for 12 months, the resolution provides certain legal authorities for countering piracy off the coast of Somalia; it condemns piracy, and calls on states to increase cooperation in counter-piracy operations and subsequent disposition of PUCs. Perhaps its most important feature is its urging of states to implement their obligations under the SUA Convention to help with PUC disposition as it applies to nearly all of the attacks occurring in the Gulf of Aden. UNSCR 1846 also authorizes states cooperating with the Somali Transitional Federal Government (TFG) to enter the country’s territorial waters and use all necessary means consistent with international law to repress acts of piracy and armed robbery.

A second U.N. Security Council Resolution, UNSCR, 1851, expressing concern over the payment of ransoms to pirates, authorizes “all necessary means” to combat piracy within Somali territorial waters. It calls on states to deploy naval assets and seize and dispose of boats, arms, and related equipment used by pirates.

Nations can establish appropriate frameworks for dealing with pirates. For example, the United Kingdom, which has also sought to modify its domestic legislation to facilitate prosecutions, has successfully negotiated with Kenya to accept jurisdiction of pirates captured by British forces. One group of pirates, captured by the HMS *Cumberland*, have already been tried in Kenya. A memorandum of understanding (MOU) signed by Kenya and the United States in January 2009, obligates the former to accept and try suspected pirates captured by the U.S. military.

Summary of Key Points.

- Combining states’ SUA obligations with existing international law against piracy provides an effective legal framework.
- The United Nations mandate on piracy does not give the international fleet permission to seize hijacked ships in an effort to free hostages. International anti-piracy agreements should allow for more aggressive and thus more effective measures.
- Agreements such as the U.S.–Kenyan MOU offer the international community a viable method to deter and punish acts of piracy.

SECTION 3

Security at Sea Solutions

Although the number of attacks and losses are modest compared to the volume of ships transiting the gulf, piracy represents a threat to freedom of the seas and a menace to the safety of U.S.-flagged carriers and the vessels of other nations. Combating piracy at sea requires a better balance of private- and public-sector efforts.

Private-Sector Responsibilities. The first and most important efforts to make the sea safer rest with the carriers themselves and their responsibility to fully implement best practices for thwarting piracy efforts. ISPS codes require a ship security plan (SSP), appointment of a ship security officer, and conducting drills. Before entering an area at high risk for piracy, plans should be fully exercised and crews well trained in implementing them. Flag-carrying nations working in concert with the International Maritime Organization (IMO) should insist that carriers increase their compliance with the ISPS code.

SSPs do not address piracy threats in detail. Thus, carriers should adopt best practices. The International Chamber of Shipping recently updated its guidance notes on Piracy and Armed Robbery. The Baltic and International Maritime Council produced a set of ship security guidelines. There are also two relevant IMO circulars: the 1999 “Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery against Ships” and the 2002 “Guidance to Ship Owners and Ship Operators, Shipmasters and Crews for Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships.” Furthermore, the Oil Companies International Maritime Forum (OCIMF) handbook, *The East Africa/Somalia Situation: Practical Measures to Avoid, Deter, or Delay Piracy Attacks*, details appropriate measures specific to the Gulf of Aden threat. In congressional testimony, OCIMF director Phil Davies estimated that “as many as 30 percent of the vessels transiting the Gulf of Aden are not following the minimum guidance outlined in publications such as the OCIMF guideline....” Adopting these practices would help significantly reduce the risks of commercial ships transiting the gulf.

Real-time information-sharing about pirate activities, maritime threats, and hot spots around the world should be provided to crews. A handful of private companies provide such information. A network between the shipping companies, military organizations, and the IMO should be developed to share real-time threat information with vessels transiting worldwide so they can avoid potential areas of higher pirate activities.

Situational awareness in the immediate area of the ship is also key to protecting a vessel against a pirate attack whether at sea or in port. Most vessels have navigation radars as their primary target detection system. These radars do not have the ability to detect the smaller fast-moving vessels used by pirates. Vessel owners and shipping companies should consider alternative detection technologies that have proven successful in other areas, including long-range high-definition camera systems that have the ability to track smaller fast-moving targets.

In addition to ensuring that crews are fully informed, trained, equipped, and prepared for anti-piracy operations, carriers can employ certified security consultants to serve on board vessels transiting high-risk areas. These consultants can provide guidance on security measures, as well as additional on-board training.

Calls for arming merchant crews or routinely placing armed security teams on ships should be viewed with some skepticism. About 90,000 commercial ships ply the world’s waterways, and arming them raises a host of legal, safety, training, and liability issues that cannot be easily addressed or justified based on the scale and scope

of the pirate threat. Some nations prohibit armed merchant vessels from entering their ports.

Nevertheless, ship security can also be enhanced through the addition of private-sector security at sea. While arming crews or placing private armed guards on board is not a panacea, private security can be effectively employed in craft that serve as a “picket” for commercial shipping. Operating independently, they can interdict pirate ships, keeping them away from the commercial vessel. These private security craft would use a reconnaissance and surveillance capability to identify small craft attempting to approach commercial vessels. They would then interpose themselves between the mother ship or attack skiffs and use non-lethal means to incapacitate or deter the pirate craft.

Whether carriers chose to employ private security assets or enhance the training and preparedness of their own crews, efforts at improving security rather than paying ransom and thus encouraging more piracy are vital. There is a precedent that demonstrates the effectiveness of public-private cooperation. According to the International Maritime Bureau of the International Chamber of Commerce, there were 38 recorded pirate attacks in the Strait of Malacca in 2004, and two in 2008. Part of the success in reducing crime at sea stems from public-private cooperation through the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia, which includes the participation of 16 nations in the region.

Naval Maritime Presence. The U.S. Navy’s presence, coupled with effective intelligence and information-sharing and targeted operations, can assist in warning and protecting ships against threats at sea; conduct interdiction and blockade missions that will serve as partial deterrent; conduct hostage rescue; and perform search-and-rescue operations in concert with other concerned naval powers.

There is already a substantial international military presence in the Gulf of Aden. Over the past year, the United States and other countries undertook several actions to protect the shipping lanes. NATO ships, later replaced by an EU task force, deployed to the region, and in January 2009 the U.S. contributed additional naval forces as part of the

Types of Vessels Attacked by Pirates

	2003	2004	2005	2006	2007
Barge/barge carrier	2	1	2	2	1
Bulk carrier	114	73	81	57	32
Cable layer	1	0	1	0	0
Catamaran	1	1	1	0	0
Cement carrier	0	1	0	0	0
Container	56	48	30	49	53
Diving support vessel	0	1	0	0	0
Dhow	0	0	0	2	3
Ferry	2	0	0	0	0
General cargo	73	38	46	30	36
Heavy lift	0	0	0	0	0
Hopper dredger	0	0	0	1	0
Landing craft	0	2	0	2	0
Lighterage ship	0	0	0	0	0
Livestock carrier	0	2	0	0	0
Multipurpose	1	0	0	0	0
OBO (ore, heavy dry bulk goods, and oil)	2	0	0	0	0
Offshore processing ship	0	0	1	1	1
Offshore barge	0	0	0	0	0
Passenger	1	0	1	2	1
Pollution control	0	0	0	1	0
Refrigerated	7	10	3	3	7
Research ship	0	0	0	0	2
Rig/platform	0	0	0	0	3
RORO (roll-on/roll-off)	5	2	5	2	3
Special-purpose ship	1	0	0	0	0
Supply ship	5	8	2	1	0
Support ship	0	0	0	0	1
Survey ship	2	0	0	0	0
Tanker-bitumen	0	0	0	0	1
Tanker-chemical product	49	56	43	35	52
Tanker-crude oil	42	17	22	9	25
Tanker-LNG (liquefied natural gas)	0	1	0	0	1
Tanker-LPG (liquefied petroleum gas)	14	13	5	4	5
Trawler/fishing	28	18	7	18	16
Tug/tug and barge	19	24	13	9	7
Vehicle carrier	1	1	2	1	1
Yacht	15	11	7	10	8
Not stated	4	1	4	0	4
Year Total	445	329	276	239	263

Source: ICC International Maritime Bureau, “Piracy and Armed Robbery Against Ships,” Annual Report, January 2007, at <http://www.southchinasea.org/docs/ICC-IMB-PRC-2007.pdf> (June 8, 2009).

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multinational anti-piracy effort, Combined Task Force 151. In addition to the U.S., other nations participating in anti-piracy operations include Great Britain, Germany, France, Denmark, Greece, Italy, Turkey, Russia, Pakistan, India, Malaysia, China, and Saudi Arabia. The Republic of Korea and Japan also plan to join. In April 2009, about 20 naval ships patrolled the waters in and around the Gulf of Aden.

Sustaining Presence. In order to sustain America's military maritime presence to deal with piracy as well as many other missions from constabulary duties to conventional warfare, the U.S. Navy requires a more robust fleet. The U.S. maritime strategy highlights how the "expeditionary character and versatility of maritime forces provide the U.S. the asymmetric advantage of enlarging or contracting its military footprint in areas where access is denied or limited."⁵ Maritime forces are intended to become regionally tailored packages for security as well as stability missions both at home and around the world depending on the need. The strategy highlights the goal that "persistent, mission-tailored maritime forces will be globally distributed in order to contribute to homeland defense, foster and sustain cooperative relationships with an expanding set of international partners, and prevent or mitigate disruptions and crises."

Out of necessity, U.S. maritime forces are operating as teams both within and among the services, but also with other federal government agencies, international partners and allies, and the private sector. This is because the sea service leaders recognize that relationships and partnerships take years if not decades to provide benefits. Further, once a crisis strikes, the U.S. cannot assume its partners will automatically assist without significant investment by the U.S. beforehand. This is why the maritime strategy calls not only for more personnel, ships, and aircraft, but also for greater cultural, historical, and linguistic expertise. The Navy and Coast Guard's "Cooperative Strategy for 21st Century Seapower" notes that "building and reinvigorating these relationships through Theater Security Cooperation requires an increased focus on capacity-building, humanitarian assistance, regional frameworks for improving maritime governance, and cooperation in enforcing the rule of law in the maritime domain."

Maritime forces must coordinate planning, programming, and budgeting to ultimately build a fleet with the capabilities necessary to meet their mission requirements and hedge against potential scenarios. Shipbuilding in general, however, has not been a high priority for the nation over the past decade. This low priority is manifest most clearly in the low numbers of ships—whether they are Littoral Combat Ships, national security cutters, icebreakers, submarines, amphibious assault ships, major surface combatants, or aircraft carriers. Coordination in the design and development stages of shipbuilding, according to U.S. maritime strategy, is important given that "modern ships rely heavily on common electronics, sensors, communications, and other systems.... Interoperability built into the system is always preferable to integration developed later as an add-on. The open-architecture approach that is being applied to modernizing the Coast Guard fleet allows for significant borrowing from commercial and government off-the-shelf developments. Since the Navy's ship acquisition program is relying more on both, opportunities for joint acquisition are increasing."

These requirements argue that current shipbuilding funds for Navy and Coast Guard modernization are wholly inadequate. The U.S. requires a more integrated and robust shipbuilding program so that the sea services can conduct missions that require sustained presence, such as combating piracy, and performing the myriad other tasks that must be done to keep the seas safe and support the joint force.

Change of Mission. The Heritage Foundation Maritime Security Working Group's previous study concluded that the U.S. Navy fleet should be expanded to at least 350 ships. This expansion is essential for the Navy to conduct its most important missions—sea control and assured access to overseas theaters. Over the long term, the U.S. maritime presence for combating piracy (as well as conducting other maritime engagement and security missions) should shift from Navy to Coast Guard.

While both services have a tradition of combating piracy, modern piracy is best addressed as a maritime law enforcement issue. The Coast Guard is better suited to this task. In addition to the Coast Guard's authority under Title 14 of the United States Code ("Law Enforcement"), it also has national responsibilities for the U.S. Ports and Waterways Security System as well as port and maritime sector operations centers and working with the IMO. The service's core competencies make the service a better fit for U.S. leadership in global anti-piracy efforts. The U.S.

5. "A Cooperative Strategy for 21st Century Seapower," Department of the Navy and United States Coast Guard, October 2007, p. 8, at <http://www.navy.mil/maritime/MaritimeStrategy.pdf> (June 3, 2009).

must also assist regional allies in improving their own coast guards and maritime security programs. Again, the U.S. Coast Guard is better suited to this task.

Like the Navy, however, the Coast Guard is overstretched. Shifting responsibilities will require speeding and expanding the modernization of Coast Guard maritime security assets. Congress should aggressively fund and accelerate Coast Guard modernization to complete it within the next 10 years, not the next 20 years presently envisioned. As documented in the Coast Guard's 2003 report to Congress, acceleration is feasible and would generate numerous efficiencies in the program while enhancing overall Coast Guard readiness.

A well-funded and accelerated program would retire aged assets earlier and introduce far more capable, newer (or converted) cutters and aircraft, now planned under the revised (post-9/11) Implementation Plan, more rapidly. Funding should be increased to at least \$2 billion a year, and related maritime security programs that address awareness, prevention, protection, response, and recovery should receive \$500 million each year.

The expansion of Coast Guard capability should also include:

- **Increasing** end-strength for the Coast Guard's Deployable Operations Group (DOG)—a “special operations force”—type asset capable of conducting advanced interdiction operations, which include high-end maritime law enforcement operations, board search and seizure, and “take-down” of ships at sea similar to the capabilities provided by the U.S. Navy SEALs, but with a law enforcement and prosecution focus. Additionally this expansion would require the addition of greater mobility assets not part of the current modernization plan to include rotary-wing aviation and specialized assault boats capable of advanced interdiction operations on the high seas.
- **Expanding** international training efforts geared toward foreign naval forces, coast guards, and maritime police agencies by providing one cutter for every day of the year to AFRICOM. Additional training capacity needs to be developed by increasing the end-strength of the Tactical Law Enforcement Teams and International Training Team to allow the Coast Guard to better focus on both training and advising partner nations' maritime law enforcement capacities.
- **Deploying** capabilities to enhancing maritime law enforcement, such as “biometrics at sea.”

Most important, accelerating Coast Guard modernization would relieve the stress on the Navy. The more the Coast Guard can assume global constabulary maritime missions, the more the Navy can focus on high-priority military missions.

Summary of Key Points.

- Flag-carrying nations working with the IMO should ensure fuller compliance with the ISPS code and ensure that commercial carriers adopt best practices for operating in waters at high risk of piracy.
- Carriers should employ private-sector security to protect their assets.
- Over the long term, to combat piracy and other maritime threats, the U.S. requires a more integrated and robust shipbuilding program for both Navy and Coast Guard surface and aviation assets.
- The U.S. military contribution should shift from the Navy to the Coast Guard, and the capacity of the Coast Guard to conduct global constabulary maritime operations must be expanded. Coast Guard modernization should be funded at \$2.5 billion a year and should include the development of advanced interdiction and special mission capabilities.

SECTION 4

Regional Response and Capacity Building

U.S. government and private-sector efforts are part of a larger patchwork of *ad hoc* multinational and national initiatives. Together, these have achieved individual successes, defeating several pirate attacks and capturing some pirates. They are, however, inadequate. Combat ships and thousands of military personnel have been vitiated by insufficient coordination. The various formations have different mandates, tactics, and rules of engagement. They also have become preoccupied with responding to immediate challenges rather than engaging in long-term local capacity building and ensuring that regional authorities have the means to protect their territorial waters and make meaningful contributions to ensuring freedom of the seas.

Unsure Response. The U.N., NATO, the EU, and various national governments have organized many separate multilateral and single-country maritime security operations in the Western Indian Ocean, the Gulf of Aden, and Red Sea regions. The U.N. effort has been manifested primarily through several U.N. Security Council resolutions calling for international action against pirates by member governments and regional security organizations, such as the African Union.

In December 2008, the EU organized Operation Atalanta, primarily to support World Food Program (WFP) deliveries to Somalia. Some two dozen warships and 1,500 naval personnel have joined this one-year mission. From October to December 2008, NATO conducted Operation Allied Provider, primarily to defend these WFP shipments from pirates. Most recently, NATO began another mission in March 2009, Operation Allied Protector. This operation now overlaps—and looks like it will duplicate—Operation Atalanta.

Along with these initiatives by international organizations, various national governments have launched their own missions. The multinational Combined Task Force 150 (CTF-150), part of the Combined Force Maritime Command of the U.S.-led Operation Enduring Freedom (OEF), has added counter-piracy to its original counterterrorism mission. In January 2009, the U.S. Naval Forces Central Command (NAVCENT) established a new task force, CTF-151. It has the same area of operation as CTF-150 (the Gulf of Aden and the sections of the west Indian Ocean near Somalia), but is dedicated primarily to combating pirates. The anti-piracy campaign in the Gulf of Aden and Horn of Africa marks the first widespread participation of the world's rising naval powers in an active maritime operation distant from their shores. China, India, and other ascending states have sent warships, both to combat pirates and to assert their growing importance as global security actors.

Twenty-four U.N. member states and five multinational organizations joined the Contact Group on Piracy Off the Coast of Somalia (CGPSC) established on January 14, 2009. Thus far, the CGPSC has primarily provided additional opportunities to monitor the behavior of the other members as well as to engage in a sustained dialogue with them. The four working groups (dealing with the diplomatic, judicial, military, and public information dimensions of the problem) and other cooperative mechanisms originating from the CGPSC have yet to achieve noticeable progress regarding their six main objectives: improving operational and information support to counter-piracy operations; establishing a counter-piracy coordination mechanism; strengthening judicial frameworks for arrest, prosecution and detention of pirates; strengthening commercial shipping self-awareness and other capabilities; pursuing improved diplomatic and public information efforts; and tracking financial flows related to piracy.

CGPSC has the potential to address some of these issues, but it might not have sufficient time to make significant progress. All these initiatives are defined as limited-term efforts whose mandates will likely expire before Somalia becomes a stable state whose government can suppress the pirates operating from its territory. As these missions end, they will need to be replaced by new extra-regional maritime operations unless local navies have developed the capacity to enforce maritime security in the Gulf of Aden and Horn of Africa.

Nationalities of Ships Attacked by Pirates (Flag State)

Ships from four nations—Liberia, Malaysia, Panama, and Singapore—have been regularly targeted by pirates, each enduring more than ten attacks per year from 2003 to 2007. Panama and Singapore have had ships attacked 260 and 139 times, respectively, during that period.

	2003	2004	2005	2006	2007		2003	2004	2005	2006	2007
Algeria	1	1	1	0	0	Lithuania	1	0	0	0	2
Antigua Barbuda	11	9	8	10	13	Luxembourg	1	0	0	0	1
Australia	4	0	0	1	0	Madeira	0	0	0	1	0
Austria	0	0	0	2	0	Malaysia	27	17	13	11	5
Bahamas	17	8	9	5	7	Maldives	1	0	2	0	0
Bahrain	0	1	0	0	0	Malta	17	13	11	14	6
Bangladesh	18	6	0	1	1	Marshall Islands	6	6	9	7	16
Barbados	1	0	0	0	0	Mongolia	0	1	1	0	1
Belgium	1	0	0	0	0	Monrovia	0	0	1	0	0
Belize	1	2	1	0	0	Morocco	1	0	0	0	0
Bermuda	2	0	0	0	0	Netherlands	6	1	3	3	4
Bolivia	1	0	0	0	0	Netherlands Antilles	3	4	2	2	0
Brazil	0	2	1	0	1	Nigeria	2	5	0	0	2
British Virgin Islands	0	0	1	0	0	North Korea	1	1	0	1	1
Burma	0	1	2	1	1	Norway	11	7	3	3	8
Cambodia	2	0	1	0	1	Oman	0	0	0	1	0
Canada	0	1	0	0	1	Pakistan	0	1	2	0	0
Cayman Islands	1	4	3	1	1	Panama	62	64	50	42	42
Chile	0	2	0	0	0	Paraguay	0	0	0	1	0
China	2	2	1	1	2	Philippines	5	2	3	3	1
Colombia	1	0	0	0	0	Portugal	0	0	0	0	2
Comoros	0	0	0	0	3	Qatar	2	1	0	0	2
Croatia	1	0	0	0	1	Russia	1	0	0	1	0
Cuba	2	0	0	0	0	Saudi Arabia	0	1	0	1	0
Cyprus	24	14	13	5	10	Singapore	41	31	24	20	23
Denmark/Int'l	12	2	1	1	3	South Africa	0	1	0	0	0
Dominica	0	0	1	0	0	South Korea	4	2	0	4	0
Egypt	0	0	1	0	1	Spain	1	0	0	0	0
Estonia	1	0	0	0	0	Sri Lanka	1	2	2	0	0
France	3	1	0	1	0	St. Kitts & Nevis	0	0	1	1	3
Gambia	0	0	0	0	1	St. Vincent & Grenadines	6	3	7	6	4
Georgia	0	1	2	0	0	Suriname	0	0	0	0	1
Germany	1	1	0	1	1	Switzerland	1	0	0	2	0
Gibraltar	2	4	1	0	6	Taiwan	3	0	4	0	2
Greece	10	5	1	1	1	Tanzania	1	0	0	0	2
Guyana	0	0	0	0	6	Thailand	4	4	6	2	3
Honduras	1	1	1	0	1	Trinidad & Tobago	1	1	0	1	0
Hong Kong	20	6	12	10	7	Turkey	1	2	1	2	2
Hungary	1	0	0	0	0	Tuvalu	0	1	0	5	2
India	17	9	10	7	6	Ukraine	1	0	0	0	0
Indonesia	8	12	6	6	3	United Arab Emirates	0	2	0	1	3
Iran	3	3	7	2	0	United Kingdom	6	7	4	3	3
Isle of Man	6	2	0	4	2	United States	6	1	7	6	1
Italy	1	3	3	0	1	Vanuatu	2	2	1	2	1
Japan	0	2	2	0	1	Venezuela	0	1	0	0	0
Jordan	0	0	0	3	1	Vietnam	1	3	3	1	1
Lebanon	1	0	0	0	0	Not stated	14	3	9	5	7
Liberia	27	34	18	24	28						
						Year Total	445	329	276	239	263

Source: ICC International Maritime Bureau, "Piracy and Armed Robbery Against Ships," Annual Report, January 2007, at <http://www.southchinasea.org/docs/ICC-IMB-PRC-2007.pdf> (June 8, 2009).

The immediate priority of maritime powers operating in the Gulf of Aden should be to harmonize the activities of the existing naval operations being conducted by the EU, NATO, and the independent maritime commands of China, Russia, and other countries. There must be a suitable division of labor that reflects the distinct concerns and capabilities of each nation—one that can best enhance the security of the international seas against transnational threats.

What's Next? AFRICOM is an underused asset in countering Somali piracy. This U.S. command has already developed the capability to help shape regional engagement in Africa and has established some contacts with the Transitional Federal Government of Somalia. AFRICOM shares responsibility with another geographic command, U.S. Central Command (CENTCOM), for facilitating security off the coast of Somalia. It could profitably apply the lessons it has learned from its Africa Partnership Station (APS) in the waters around West Africa. This year, the second APS deployment occurred. The program helps partner nations build maritime security capacity to manage their territorial waters, combining aspects of maritime security that cut across the civil and military domains: counter-piracy, counter-trafficking, and maritime domain awareness. It includes the U.S. Navy, the U.S. Coast Guard, and representatives from other U.S. agencies and international partners. U.S. Special Operations Command-Africa conducts many capacity building activities in Operation Enduring Freedom–Trans Sahara under AFRICOM command and control, and in coordination with the respective American chiefs of mission in the relevant countries. Support for activities in Egypt—whose profitable Suez Canal is under threat from the Somali pirates—is the responsibility of AFRICOM, even though Egypt is located in the area that is usually CENTCOM's responsibility. In the near term, AFRICOM is best positioned to harmonize the engagement activities of the Departments of Defense, State, and other U.S. government agencies involved in combating piracy.

Regional Maritime Patrol. Governments in the region should also work to promote cooperation among the navies of those coastal states in the Western Indian Ocean, Gulf of Aden, and Red Sea regions that commit to countering local pirates and other transnational threats. Ideally, these countries—which include Djibouti, Egypt, Eritrea, Kenya, Saudi Arabia, and Tanzania should pool their resources into a regional maritime patrol. This force would engage in intelligence-sharing, the dissemination of early-warning information, and joint protection and enforcement operations.

In addition to countering piracy, a regional maritime patrol would address other transnational maritime problems in the Horn of Africa region, including managing fishing and monitoring environmental threats. The pirates have gained some local support by claiming to defend Somalis against illegal fishing and maritime dumping by foreign fleets. Establishing an official coast guard force that included Somali participation would deprive them of this prop as well as provide an alternative source of livelihood to potential sea pirates.

The weak naval assets available to the countries around the Horn of Africa will require them to depend on external support from extra-regional governments and international organizations. These could provide funding, training, and advanced surveillance and other technologies designed to strengthen their capabilities. Over time, the extra-regional fleets could reduce their operations as they transfer missions to the regional security force. One logical evolutionary path would see the international fleets concentrate their non-support efforts on distant off-shore missions while the local navies focused on coastal security.

At present, U.S. maritime assistance programs are poorly integrated to support this and related regional security initiatives. Several federal agencies—including the Departments of Defense, Energy, and Homeland Security—have programs designed to enhance the security of foreign ports and international waterways, but the U.S. government lacks an adequate agency-level mechanism to harmonize these efforts. To facilitate coordination of these programs, the U.S. Coast Guard should be made the lead federal agency for U.S. foreign assistance programs related to maritime security, including those aimed at enhancing anti-piracy efforts of the navies of the Western Indian Ocean, Gulf of Aden, and Red Sea regions.

Although the United States and Europe have taken a lead role in organizing the two main multinational fleets patrolling the waters off Somalia, their governments need to harmonize their foreign seaport and maritime trade security assistance programs. While European governments have to make sense of the disparate policies of the various U.S. agencies engaged in this area, American officials confront an equally confusing plethora of European programs that involve different countries, national agencies, and NGOs. The EU conducts its own maritime security

projects, but these, too, involve a diverse collection of ministries and other stakeholders. Since the United States belongs to NATO, American officials can more easily engage European governments on maritime security issues through the North Atlantic Council.

Building Long-Term Regional Partnerships. The international community should also build on the successes of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia. Earlier this year, the IMO held a high-level meeting in Djibouti to adopt a similar regional code of conduct for 21 countries in the Western Indian Ocean, the Gulf of Aden, and Red Sea regions. The planned network of relationships among partners would include information-sharing, capacity-building, and cooperative arrangements. The code is planned to help facilitate networks for sharing and reporting relevant information through a system of national focal points and information centers. Priorities comprise interdicting, apprehending, and prosecuting pirates as well as facilitating proper treatment of seafarers affected by acts of piracy. Participants in the code intend to cooperate in the arrest, investigation and prosecution of pirates, seizure of their ships and rescue of those victimized by acts of piracy. Information-exchange centers are planned for Kenya, Tanzania, and Yemen. A regional training center is to be established in Djibouti. Of a potential 21 countries, only Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, United Republic of Tanzania, and Yemen have signed the Regional Cooperation Agreement.

While signing a regional agreement was a first step, it is not enough. The U.S. must encourage regional leaders to establish the infrastructure and systems to support regional cooperation, building facilities to appropriately house equipment and personnel, and installing networks and information-management systems as well as training staffs for proper operation. The long-term goal must be to establish information systems for indigenous control, operation, and information-sharing consistent with regionally established doctrines.

Expanding Bilateral Cooperation. The lack of interoperability, specialization, and orientation around key missions leaves most of the naval forces in the region with only limited ability to address threats such as that posed by piracy. These naval forces need more modern ships, aviation assets, intelligence systems, and logistics. Common data links for shared and improved situational awareness should be created.

The United States and other countries have been working with the major states of the region, most notably Saudi Arabia and Egypt, to improve their sea control capabilities. In order to achieve greater interoperability, the U.S. Navy should increase the number of training exercises with regional naval forces, either at the bilateral or multilateral level. The United States should expand its assistance to the Saudi navy which has initiated a major modernization program. The sale to Saudi Arabia of some number of Littoral Combat Ships, advanced unmanned aerial vehicles, and intelligence fusion systems should be considered.

Key Points and Summary.

- Current *ad hoc* international efforts at building regional partnerships and capacity are inadequate.
- AFRICOM is best positioned to harmonize the engagement activities of the Departments of Defense, State, and other U.S. government agencies involved in combating piracy.
- The U.S. should encourage states in the region to pool their resources into a common regional maritime patrol.
- The U.S. should also encourage states in the region to implement and invest in an initiative similar to the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia.
- The U.S. should expand its assistance to the Saudi navy which has initiated a major modernization program. The sale to Saudi Arabia of some number of Littoral Combat Ships, advanced unmanned aerial vehicles, and intelligence fusion systems should be considered.

SECTION 5

Governance in Somalia

A key base of operation for pirates in the Gulf of Aden, Somalia stands for all intents and purposes as a non-country. Aside from the autonomous, broadly self-governed enclaves of Somaliland and Puntland in the northern parts of the country, Somalia has suffered under “governance” by a succession of tribal factions, warlords, Islamist groups, and foreign interventions for the past 18 years. Ultimately, eliminating the pirate threat requires restoring governance to Somalia.

After the U.N. withdrew from Somalia in March 1995 without restoring a central government, little progress has been made in creating a security infrastructure—including administrative and legal institutions—on land. Since 2004, the U.N., the U.S., and some other countries have supported the Transitional Federal Government diplomatically and financially in an attempt to promote a functioning central government. Although the TFG is internationally recognized as the government of Somalia, it has proven to be a weak institution hindered by a lack of legitimacy among the Somali population. Since it has no navy or coast guard it cannot participate in the security of coastal area.

The pirates live in Somalia, where they sell the fruits of their piracy, acquire resources for more missions, and collect intelligence needed to target ships from onshore spies. Cutting pirates off from these benefits is central to minimizing Somali piracy over the long term. Interest in dealing with the lawlessness and instability in Somalia has been elevated by the recent press attention on piracy. U.S. policymakers should resist letting news headlines drive policy, such as supporting a new U.N. peacekeeping operation, which would face enormous, perhaps insurmountable, challenges. Key among such challenges is that there is no legitimate and lawful leader able to assert authority for the U.N. peacekeeping operation to support. Instead, the U.S. should be seeking an approach to Somalia that capitalizes on existing realities with a medium- to long-term strategy that restores international respect for Somali sovereignty while making clear piracy is not an acceptable strategy for responding to illegal foreign incursions in Somali waters.

Recognize the Failure of Imposing a Centralized State Authority. Somalia is a failed state with various powerful factions possessing little, if any, national allegiance. A strategy of establishing a state-centric model (throwing capital, political and financial, at a succession of worthless central authorities) has been proven ineffective: The TFG is the 14th such interim government structure since 1991.

Instead, the U.S. should support a “grassroots model” of identifying and bolstering existing legitimate authorities, including civil society and traditional clan authorities—excepting those with links to terrorism, piracy, or Islamic extremism. Applying this strategy will take time and face many difficulties. However, such an approach is more likely to lead to success in the long run.

Encourage Improved Governance in Somalia. To encourage local Somali authorities and “statelets” to improve their governance structures and to mature politically, the international community should reward them with international help in seeking a political solution to the country’s misrule. Provided they meet clear benchmarks, as political entities in Somalia adopt measures for effective governance and the promotion of economic development, they should be rewarded.

In providing assistance, attention to addressing the issue of piracy should be a priority. For instance, to address the situation in Puntland, the international community should demand that local authorities clamp down on piracy and cooperate with international anti-piracy efforts as a key early condition. A similar approach should be used for other Somali regions, albeit tailored to their specific circumstances—but all should include evenhanded approaches to both local and foreign-led lawlessness as a means to credibly discredit extremism and discontent.

Enhance International Efforts to Deal with Piracy. The U.S. and other countries should seek to undermine the profitability of piracy, as well as the underlying structure that sustains it. This includes applying U.S. Treasury sanctions on financial institutions linked to piracy or prohibiting insurance claims on ransoms paid to pirates. The U.S., in coordination with other nations, should implement a naval interdiction and blockade of Somali and other ports known to be harboring pirates. Such a move would, in the mid- to long-term, dry up Somali citizens' support for local antiheroes and, potentially, provide local and international enforcement capabilities with valuable intelligence.

The U.N. Security Council could assist by blessing interdiction of ports in Somalia and other nations where pirates have demonstrably been able to seek refuge; recognizing the historical customary international law practice of applying universal jurisdiction in cases of piracy on the high seas and the authority of ships to sink private vessels; detaining pirates and delivering them to legal authorities; and permitting national authorities to punish them as they deem appropriate, providing they comply with fundamental due process. At the same time, the Security Council should demand both international respect for Somalia's Exclusive Economic Zone (EEZ) and related conventions that bar the dumping of toxic wastes, with international predators caught on the high seas delivered to competent authorities and, in the case of conviction of serious crimes, the confiscation of private vessels, for possible resale and a repatriation of profits to eligible Somalis and those seeking to help them with damage mitigation.

While more effective anti-piracy efforts should be applied to the Horn of Africa and surrounding waters, the uniquely lawless situation in Somalia requires supplementary strategies. Specifically, the U.S. must focus attention on recognizing and bolstering points of stability in Somalia and working with local authorities toward the long-term goal of expanding governance in the country. This means that piracy, as well as poaching and environmental desolation by foreigners, should be vigorously combated.

Key Points and Summary.

- Defeating piracy requires returning governance in Somalia. The U.S. must focus attention on recognizing and bolstering points of stability in the country, working with local authorities toward the long-term goal of expanding governance in the country.
- The U.S. should petition the U.N. Security Council to support the interdiction of ports in Somalia and other nations where pirates have demonstrably been able to seek refuge.
- The U.S. should support the Security Council in demanding international respect for Somalia's Exclusive Economic Zone (EEZ) and related conventions that bar the dumping of toxic wastes.

CONCLUSION

Ensuring freedom of the seas is essential to global commerce. It is the responsibility of nations to ensure the right of shipping vessels to transit the world's shipping lanes unmolested. America should do its part. While the U.S. does not have a vital national interest in combating piracy in the Gulf of Aden at the moment, it does have an important role to play in building security and cooperation in the region. The U.S. effort must be persistent and well integrated. What is required is American leadership that endures after the flash of pirate headlines have disappeared from American newspapers. In particular, the United States must:

- **Collaborate** with other flag-carrying nations to ensure that private carriers comply with the ISPS code and adopt best practices, including the appropriate use of private maritime security and consulting.
- **Expand** the capacity of the U.S. Coast Guard for conducting global maritime constabulary operations, including combating piracy as well as further developing new advanced interdiction operations and helping partner nations build security capacities.
- **Use** AFRICOM to integrate and organize security assistance efforts.
- **Encourage** nations in the region to establish a joint maritime patrol and the infrastructure for a regional network to combat piracy.
- **Work** with the international community on a proactive strategy to re-establish governance in Somalia by bolstering points of stability in the country, and working with local authorities toward the long-term goal of expanding rule of law in the country.

These actions would form the basis for a responsible response to piracy in the Gulf of Aden—and a model for combating transnational crime at sea in other regions.



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